A **FAUSTINA ANNE STA MARIA v. MARY PATRICIA DE CRUZ**

COURT OF APPEAL, PUTRAJAYA
SUPANG LIAN JCA
M GUNALAN JCA
AZIZUL AZMI ADNAN JCA
B [CIVIL APPEAL NO: B-02(NCVC)(A)-2250-12-2022]
16 OCTOBER 2023

Abstract – *The rights of beneficiaries under an intestacy exist under a trust for conversion, which trust is constituted by statute pursuant to s. 6(1) of the Distribution Act 1958. The rights of a beneficiary under a trust for conversion does not, however, confer upon the beneficiary any interest or property in particular assets comprised in the estate. Title to or property in such assets may only come into the hands of such categories of beneficiaries if and when those assets are distributed to them once the estate has been fully administered. The rights of the beneficiaries under an intestacy do not cease or terminate upon their death; the rights remain extant under the trust for conversion and is enforceable by and on behalf of the estate of the deceased as a chose in action.*

SUCCESSION: *Distribution of estate – Intestacy – Beneficiaries under unadministered estate – Whether capable of passing interest or property in lands – Whether beneficiaries have interest or property in lands – Whether beneficiary under intestacy takes under statutory trust for sale and conversion – Whether right existing as chose in action – Whether interests of beneficiary under intestacy extinguished upon death of beneficiary – Whether rights under trust for conversion devolves to heirs of beneficiary – Distribution Act 1958, s. 6(1) – Small Estates (Distribution) Act 1955, s. 8*

The appellant was the estranged wife of Eric De Cruz, the deceased. They had no children. The respondent was one of the four sisters of Eric De Cruz. Prior to his death, Eric De Cruz filed a divorce petition. He died intestate before the petition was determined. His mother, Madam Mabel De Cruz, died some 11 months later, survived by her four daughters, the respondent among them. Eric De Cruz's father had predeceased him. The respondent made an application under s. 8 of the Small Estates (Distribution) Act 1955 ('SEDA') for the distribution of the estate of Eric De Cruz. The respondent was also the administrator of the estate of her late mother. When the application first came up for hearing, the appellant informed the Land Administrator ('LA') that the respondent did not possess any right to make an application under s. 8. Despite the appellant's protest, the LA proceeded to appoint the respondent as the administrator of Eric De Cruz's estate. Hence, the appellant commenced an originating summons, among others, to be declared as the sole heir to the estate of her late husband and to set aside the application by the respondent under the SEDA on the basis that the

respondent lacked *locus standi* to make the application. The High Court Judge ('HCJ') found that the estate was a small estate within the meaning of s. 3(2) of the SEDA, and therefore, the LA possessed exclusive jurisdiction to deal with the distribution and administration of the estate. The High Court also found that the respondent was possessed with the necessary *locus standi* to make the s. 8 application. In the present appeal, the principal ground relied upon by the appellant centred upon the contended error of law committed by the HCJ in determining that the respondent possessed sufficient *locus* to pursue the application under s. 8 of the SEDA.

Held (dismissing appeal)
Per Azizul Azmi Adnan JCA delivering the judgment of the court:

(1) While the Federal Court in *Chor Phaik Har v. Farlim Properties Sdn Bhd* ruled that the beneficiaries under an unadministered estate were incapable of passing interest or property in the lands to the respondents, on the basis that they themselves did not have any interest or property in the lands, it did not state that the beneficiaries under an unadministered estate had no rights at all. The beneficiary under an intestacy takes under a statutory trust for sale and conversion. The statutory trust is created by s. 6(1) of the Distribution Act 1958 ('DA'). (paras 19 & 20)

(2) In a trust for conversion, the beneficiary is entitled under the trust, not to the assets comprised in the trust itself, but to the proceeds of the sale of such assets, after deducting the liabilities of the estate. Similarly, the beneficiaries under an intestacy have a right to require distribution to be effected in accordance to s. 6(1) of the DA. While the beneficiary under an intestacy has no interest or property in specific assets forming part of the estate of the deceased; there remained a right of the beneficiary existing as a chose in action. (paras 23 & 32)

(3) The interests of a beneficiary under an intestacy is not extinguished upon the death of that beneficiary. Where a beneficiary under an intestacy himself or herself dies intestate before the estate is fully administered, the rights under the trust for conversion devolves to his or her beneficiaries, the identities of whom are determined in accordance with s. 6(1) of the DA. Hence, Madam Mabel De Cruz's share in the estate of her son devolved upon her death to her lawful heirs, amongst whom was the respondent. This meant that the respondent was entitled to petition for distribution under s. 8 of the SEDA in respect of the estate of Eric De Cruz. (paras 33-35)

(4) On the issue that the asset claimed by the respondent as the administrator of the estate of Madam De Cruz was in respect of a non-existent proceeding, the listing of assets in the application for the administration of Madam De Cruz's estate had no bearing in the present

A appeal. At the time the application for letters of administration for Madam De Cruz's estate was made by the respondent, the letters of administration granted to the appellant in respect of the estate of Eric De Cruz had not been set aside. Thus, the listing of assets was meant to refer to the rights of the estate of Madam De Cruz to claim for her share
B in the estate of Eric De Cruz under a trust for conversion. (para 36)

Case(s) referred to:
Chor Phaik Har v. Farlim Properties Sdn Bhd [1994] 4 CLJ 285 FC ***(refd)***
Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC ***(refd)***
Gurmit Singh Lai Singh v. Sarjit Singh [2018] 1 LNS 1500 CA ***(refd)***
C *Selvarany Chelliah v. Selvarajah Chelliah & Ors [2022] 1 LNS 1216 HC* ***(refd)***
Tan Heng Poh v. Tan Boon Thong & Ors [1992] 3 CLJ 1340; [1992] 1 CLJ (Rep) 316 SC ***(refd)***

Legislation referred to:
Distribution Act 1958, s. 6(1)(e)
D National Land Code, s. 327
Small Estates (Distribution) Act 1955, ss. 3(2), 8

For the appellant - Cedric Nigel Miranda & Lina Paramasweran; M/s Cedric Miranda & Co
For the respondent - Mavin Thillainathan & Amitaesh Theva; M/s Lavania & Balan Chambers
E

[Editor's note: Appeal from High Court, Shah Alam; Originating Summons No: BA-24NCVC-1217-10-2021 (affirmed).]

Reported by S Barathi

F

JUDGMENT

Azizul Azmi Adnan JCA:

Introduction

[1] The appellant in this case commenced an originating summons against
G her sister-in-law seeking orders, among others, to declare that the respondent was not entitled to file a petition for the distribution of the estate of the appellant's late husband and for the appellant to be declared the sole heir to his estate.

H *Material Background Facts*

[2] The appellant, Madam Faustina Sta Maria, was the estranged wife of Mr Eric De Cruz, who has since passed away. They had no children. The respondent, Madam Mary De Cruz, is one of the four sisters of Mr De Cruz.

[3] Prior to his death, Mr De Cruz filed a divorce petition. He died
I intestate before the petition was determined.

[4] Mr De Cruz died intestate on 30 April 2011. His mother, Madam Mabel De Cruz, died some 11 months later, survived by her four daughters, the respondent among them. Mr De Cruz's father had predeceased him.

[5] The respondent made an application on 27 February 2019 under s. 8 of the Small Estates (Distribution) Act 1955 for the distribution of the estate of Mr De Cruz. The respondent was also the administrator of the estate of her late mother. When that application first came up for hearing on 6 May 2021, the appellant informed the Petaling district Land Administrator that the respondent did not possess any right to make an application under s. 8. Despite the protestations of the appellant, the Land Administrator nonetheless proceeded to appoint the respondent as administrator of Mr De Cruz's estate. According to the appellant, she was advised by the Land Administrator to apply to the High Court to set aside the respondent's application of 27 February 2019.

At The High Court

[6] The appellant commenced an originating summons in October 2021 seeking (amongst others) to be declared as the sole heir to the estate of her late husband and to set aside the application by the respondent under the Small Estates (Distribution) Act 1955 on the basis that the respondent lacked *locus standi* to make the application. Various orders were also sought to injunct the respondent from intermeddling in the estate of Eric De Cruz.

[7] The learned High Court Judge hearing the originating summons found that the estate was a small estate within the meaning of s. 3(2) of the Small Estates (Distribution) Act 1955, and hence the land administrator possessed exclusive jurisdiction to deal with the distribution and administration of the estate. The High Court nonetheless proceeded to determine the issue of the *locus standi*, by which it may be surmised that the High Court considered that it was sufficiently seized of the jurisdiction to do so. The High Court found that the defendant was possessed with the necessary *locus standi* to make the s. 8 application, holding as follows:

> [23] Dari affidavit yang difailkan sava dapati Defendan mempunyai locus untuk membuat permohonan kepada Pentadbir Tanah. Permohonan Defendan kepada Pentadbir Tanah untuk pembahagian pusaka simati adalah setakat ½ bahagian pusaka tersebut. Pada masa simati meninggal dunia ibu simati mash hidup dan ibu simati mempunyai hak untuk mendapat pusaka simati bersama-sama Plaintif (s. 6 Distribution Act 1958).
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> [24] Adalah meniadi fakta bahawa ibu simati telah meninggal dunia tidak lama selepas simati meninggal dunia. Penentuan hak ibu simati adalah pada masa kematian simati dan hak ibu simati kepada pusaka simati tidak luput dengan kematiannya (*Gurmit Singh a/l Lal Singh v. Sarjit Singh a/l Lal Singh* [2018] MLJU 1407). Lihat juga *Dr Shamuganthan v. Periasamy s/o Sithambaram Pillay* [1997] 3 MLJ 61.

A [25] Fakta juga menunjukkan ibu simati meninggalkan waris-waris termasuk Defendan semasa kematiannya. Oleh kerana hak simati terhadap pusaka simati berterusan selepas kematiannya, hak ibu simati boleh diperturun kepada waris- warisnya, tanpa mengira fakta ibu simati tidak mempunyai asset lain yang boleh dimasukkan sebagai senarai asset pusaka ibu simati selain dari haknya terhadap pusaka simati.

B [26] Defendan adalah salah seorang waris pusaka ibu simati. Defendan telah memperolehi surat mentadbir pusaka ibu simati. Berasaskan kedudukan bahawa hak ibu simati terhadap pusaka simati dan defendan telah memperolehi surat mentadbir pusaka simati maka defendan menjadi orang yang berkepentingan terhadap pusaka simati di atas kapasitinya C sebagai pentadbir pusaka ibu simati yang mempunyai hak ke atas pusaka simati (s. 8(1) Small Estate Distribution Act, 1955 (revised 1972).

[27] Kedudukan Defendan sebagai pentadbir pusaka ibu simati yang haknya berterusan walaupun sudah meninggal dunia maka Defendan menjadi orang untuk membuat permohonan kepada Pentadbir tanah berkaitan pusaka simati. Berdasarkan kedudukan tersebut, Defendan D mempunyai locus untuk membuat permohonan ke Pejabat Tanah Petaling untuk pusaka simati.

The Grounds Of The Appeal

[8] The appellant raised sixteen separate grounds of appeal in the E memorandum of appeal. It will not be necessary for each ground to be repeated here. It suffices for the present purposes to state that the principal ground relied upon by counsel by the appellant centres upon the contended error of law committed by the learned High Court Judge in determining that the respondent possessed sufficient *locus* to pursue the application under F s. 8 of the Small Estates (Distribution) Act 1958.

[9] It may be observed that none of the parties raised the issue of jurisdiction of the High Court, and as such it will not be necessary for it to be addressed here.

G **Analysis And Decision**

[10] The crisp issue for determination is whether Madam Mabel De Cruz's share in the estate of her son devolved upon her death to her lawful heirs, or whether – as argued by counsel for the appellant – her interest in the estate ceased or lapsed and reverted to the appellant upon her death. If the former H proposition is the one that is correct in law, then the respondent would have been entitled to make the application for distribution under s. 8 of the Small Estates (Distribution) Act 1955; if not, then the appeal must be allowed.

[11] The fact that, at the time of the passing of Mr Eric De Cruz, the appellant and Madam Mabel De Cruz were the only heirs to his estate is not I in dispute. The principles of intestate succession applying to a non-Muslim are set out in s. 6 of the Distribution Act 1958, sub-s. (1) of which reads as follows:

Section 6. Succession to intestate estates.

(1) After the commencement of this Act, if any person shall die intestate as to any property to which he is beneficially entitled for an interest which does not cease on his death, such property or the proceeds thereof after payment thereout of the expenses of due administration shall, subject to the provisions of section 4, be distributed in the manner or be held on the trusts mentioned in this section, namely:

(a) if an intestate dies leaving a spouse and no issue and no parent or parents, the surviving spouse shall be entitled to the whole of the estate;

(b) if an intestate dies leaving no issue but a spouse and a parent or parents, the surviving spouse shall be entitled to one-half of the estate and the parent or parents shall be entitled to the remaining one-half;

(c) if an intestate dies leaving issue but no spouse and no parent or parents, the surviving issue shall be entitled to the whole of the estate;

(d) if an intestate dies leaving no spouse and no issue but a parent or parents, the surviving parent or parents shall be entitled to the whole of the estate;

(e) if an intestate dies leaving a spouse and issue but no parent or parents, the surviving spouse shall be entitled to one-third of the estate and the issue the remaining two-thirds;

(f) if an intestate dies leaving no spouse but issue and a parent or parents, the surviving issue shall be entitled to two-thirds of the estate and the parent or parents the remaining one-third;

(g) if an intestate dies leaving a spouse, issue and parent or parents, the surviving spouse shall be entitled to one-quarter of the estate, the issue shall be entitled to one-half of the estate and the parent or parents the remaining one-quarter;

(h) subject to the rights of a surviving spouse or a parent or parents, as the case may be, the estate of an intestate who leaves issue shall be held on the trusts set out in section 7 for the issue;

(i) if an intestate dies leaving no spouse, issue, parent or parents, the whole of the estate of the intestate shall be held on trusts for the following persons living at the death of the intestate and in the following order and manner, namely:

Thirdly, on the trusts set out in section 7 for the uncles and aunts of the intestate in equal shares; but if no person takes an absolutely vested interest under such trusts, then

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> Fourthly, for the great grandparents of the intestate and if more than one survive the intestate in equal shares absolutely; but if there are no such great grandparents surviving, then
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> Fifthly, on the trusts set out in section 7 for the great grand uncles and great grand aunts of the intestate in equal shares.

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> (j) In default of any person taking an absolute interest under the foregoing provisions the Government shall be entitled to the whole of the estate except insofar as the same consists of land.

[12] Of particular relevance is sub-para. (b) above, by the proper operation of which the appellant was entitled to one half share of the estate, and Madam C De Cruz to the other.

[13] According to learned counsel for the appellant, once Madam De Cruz passed away, her interest in her son's estate ceased. It was only if the estate had been completely administered and distributed – argued counsel – that Madam De Cruz would have an interest in the estate.

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[14] Reliance was placed by the appellant on the High Court case of *Selvarany Chelliah v. Selvarajah Chelliah & Ors* [2022] 1 LNS 1216; [2023] 1 MLRH 1. In that case, the deceased, one Chelliah Vallipuram had died intestate, leaving behind his widow, Maheswary, and their children. E Maheswary and one of the children had been granted letters of administration. Maheswary subsequently passed away without having completed the distribution of Chelliah's estate. The question arose whether Maheswary had an interest in the estate of Chelliah (which comprised a terraced house in Petaling Jaya). The High Court held that she did not, F relying on the Federal Court decision in *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 4 CLJ 285; [1994] 1 MLRA 356, and holding as follows:

> [10] Maheswary, therefore, who was a beneficiary of Chelliah's estate, had no interest in the Estate Property until the administration of Chelliah's estate was complete and distribution made according to the laws of the distribution of intestate estates. This is trite law as expounded G by the Federal Court in *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 1 MLRA 356.

[15] The first observation that may be made is that the correct citation for the case ought to be *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 4 CLJ 393; [1997] 1 MLRA 566. There was an earlier Federal Court judgment H reported for that case, which did not concern the scope of a beneficiary's interest under an intestacy.

[16] For the present purposes, the facts of *Chor Phaik Har v. Farlim Properties Sdn Bhd* may be briefly summarised as follows. The respondents in that case I had purchased lands comprised in the Ayer Itam Estate in Penang from, among others, the beneficiaries of the unadministered estate of one Chor Bah

Say, deceased. The respondents applied to the High Court for caveats that had been entered upon the lands to be removed, on the basis that the respondents were "persons aggrieved" within the meaning of s. 327 of the National Land Code 1965.

[17] The Federal Court held that the beneficiaries of the unadministered estate of Chor Bah Say had no interest or title in the subject lands, and hence were not capable of conveying the lands to the respondents through the sale and purchase agreements entered for that purpose. It followed therefore that the respondents could not be "persons aggrieved" so as to be entitled to the removal of the caveats.

[18] The following passage from the judgment of the Federal Court bears reproduction *in extenso*:

> [12] It must be observed at the outset that there is no clear authority for the proposition that a beneficiary under an intestacy has no interest in the property of a deceased person until the estate has been fully administered. In our view, however, there is much persuasive force in what is stated in the textbook on "*The Law and Practice of Intestate Succession*" by CH Sherrin and Bonehill. At p. 93 the learned authors opined as follows:
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> > Questions accordingly arise as to the nature of the beneficiary's interest under an intestacy during the course of administration. Has he, for instance, an interest which is capable of being bequeathed by his will or of being disclaimed?
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> > There is considerable authority on this point and the answers to the questions posed are to be found in the House of Lords decisions in *Lord Sudeley v. Attorney General*, and *Dr Barnado's Homes National Incorporated Association v. Commissioners for Special Purposes of the Income Tax Acts* and in the Privy Council decision in *Commissioner of Stamp Duties (Queensland) v. Livingston* [1965] AC 694. *Although these cases were all concerned with testate succession, the principles stated are usually regarded as being applicable equally to the nature of a beneficiary's right on intestacy*. [Original emphasis]. The basic principle appears from the *Barnado*'s case, where it was clearly stated:
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> > > When the personal estate of a testator has been fully administered by his executors and the net residue ascertained, the residuary legatee is entitled to have the residue as so ascertained, with any accrued income, transferred and paid to him: but until that time he has no property in any specific investment forming part of the estate or in the income from any such investment, and both corpus and income are the property of the executors and are applicable by them as a mixed fund for the purposes of administration.
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> [13] We would also refer to a passage in "*Executors, Administrators and Probate* (17 Edn), 1993" by Williams, Mortimer and Sunnecks which stated at p. 1050:

A residuary legatee has no interest in a defined part of the estate until the residue is ascertained, nor can income be ascribed to unascertained residue. *His right, which is of course transmissible, is to have the estate properly administered and applied for his benefit when the administration is complete*. The right of a beneficiary claiming on a total intestacy is similar, except that he takes under a statutory trust for sale and conversion.

[14] Based on the above commentaries, founded no doubt on the analogous principle of law concerning testate succession, it is our conclusion that in law a beneficiary under an intestacy has no interest or property in the personal estate. (emphasis added)

[19] It is important to observe that while the Federal Court ruled that the beneficiaries under an unadministered estate were incapable of passing interest or property in the lands to the respondents, on the basis that they themselves did not have any interest or property in the lands, it did not state that the beneficiaries under an unadministered estate had no rights at all. As explained in the passage quoted at para. 13 of the judgment of the Federal Court, the beneficiary under an intestacy takes under a statutory trust for sale and conversion.

[20] The statutory trust is created by s. 6(1) of the Distribution Act 1958 itself. The operative words in the first paragraph of s. 6(1) provides as follows:

... if any person shall die intestate as to any property to which he is beneficially entitled for an interest which does not cease on his death, such property or the proceeds thereof ... shall ... be distributed in the manner or be held on the trusts mentioned in this section.

[21] What is a trust for conversion?

[22] The Supreme Court case of *Tan Heng Poh v. Tan Boon Thong & Ors* [1992] 3 CLJ 1340; [1992] 1 CLJ (Rep) 316; [1992] 2 MLJ 1 dealt with the question of whether a beneficiary in the estate of his late father was entitled to maintain a caveat over lands comprised in the estate. The Supreme Court affirmed the decision of the High Court removing the caveat, holding that, because the value of the estate remained uncertain pending completion of administration, the appellant was a beneficiary under a trust for conversion, which in turn meant that he had no caveatable interest over the eight parcels of land.

[23] In a trust for conversion, the beneficiary is entitled under the trust not to the assets comprised in the trust itself, but to the proceeds of the sale of such assets, after deducting the liabilities of the estate. Where a legatee is beneficially entitled to the residuary in an estate, the law imputes the existence of a trust for conversion. Because the legatee is said not to possess an interest in the properties under the trust but rather to the proceeds of sale

of such properties, he cannot therefore possess or maintain a caveatable interest over such properties. Similar principles apply to beneficiaries under an intestacy. The beneficiaries under an intestacy have a right to require distribution to be effected in accordance to s. 6(1) of the Distribution Act 1958 and to the future proceeds of sale of the properties comprised in the estate, but they do not have any rights, title or interest in the specific properties themselves.

[24] It would not be inaccurate to describe the right of a beneficiary under an intestacy as a chose in action, for it is a right that may be enforced by an action commenced in court. (It is quite wrong to limit choses in action to rights accruing in contract only, as alluded to by counsel for the appellant). Perhaps a better way to describe the rights of a beneficiary under an intestacy is that these are rights arising under a statutory trust for conversion, because such a phrase describes the genesis of such rights.

[25] The key and determinative question is this: what happens to the rights of a beneficiary under an intestacy when the beneficiary passes on before the assets of the estate or the proceeds of sale of such assets are distributed?

[26] The answer is that, if the beneficiary dies intestate, such rights devolve to his or her beneficiaries in the manner prescribed under s. 6(1) of the Distribution Act 1958. Such rights are not extinguished upon death.

[27] The Court of Appeal case of *Gurmit Singh Lai Singh v. Sarjit Singh* [2018] 1 LNS 1500; [2018] MLJU 1407 illustrates this point. In that case, the appellant and the applicant at first instance, Gurmit Singh, commenced an action to be appointed as the administrator of the estate of his late mother. His four siblings were named as respondents. Their father, Lal Singh had passed away in 1996, leaving their mother, Pritam Kaur and the five children. Lal Singh was the registered proprietor of a property in Setapak. Pritam Kaur passed away in 1999.

[28] The Setapak property came to be registered in the name of Munjit Kaur, who was one of the sisters of the appellant and the second respondent at the Court of Appeal. A land search over the property could not reveal when the property was registered in her name, suggesting some irregularity or impropriety in the process of transfer.

[29] One of the issues that arose was whether the mother's estate was entitled to a one-third share of the Setapak property, with the siblings entitled equally to the remaining two-thirds. (Under s. 6(1)(e) of the Distribution Act 1958, if an intestate dies leaving a spouse and issue but no parent or parents, the surviving spouse shall be entitled to one-third of the estate and the issue the remaining two-thirds).

[30] The Court of Appeal held that, upon the death of Lal Singh, his wife Pritam Kaur became entitled to a one-third share of his estate, with their children entitled to the remaining two-thirds. Lal Singh's estate was still unadministered at the time of Pritam Kaur's passing in 1999. Upon her death, Pritam Kaur's entitlement to her late husband's estate then formed part of her estate. This entitlement was described by the Court of Appeal as a chose in action.

[31] Stephen Chung JCA in that case stated as follows:

> [20] Although no Letters of Administration were taken out in the estate of their late father, the Appellant by way of the OS applied for letters of administration of the estate of their late mother in respect of her beneficial interest in the one-third share in the estate of their late father's estate pursuant to s. 6(1)(e) of the Distribution Act. In our view and for the purpose of the Probate and Administration Act 1959 read together with section 6(1) of the Distribution Act 1958, there is asset in the deceased's beneficial share in the property which asset (chose in action) formed the estate. Based on the circumstances of the case, the Appellant has the necessary *locus standi* to apply for the Letters of Administration in the estate of his late mother.

[32] It is important to observe that the Court of Appeal in *Gurmit Singh* specifically acknowledged the principle in *Chor Phaik Har v. Farlim Properties*, that the beneficiary under an intestacy has no interest or property in specific assets forming part of the estate of the deceased. The court nonetheless held that, despite this, there remained a right of the beneficiary existing as a chose in action. At para. 14 of the judgment, the Court of Appeal stated as follows:

> [14] A beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution is made according to the law of distribution on the intestate's estate: *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 3 MLJ 188.

[33] Learned counsel for the appellant sought to distinguish *Gurmit Singh Lal Singh v. Sarjit Singh* on the basis that the deceased in that case was the father of the appellant, whereas the deceased in the present case before this court was the husband of Madam Faustina Sta Maria, the appellant in the present instance. The difference in the factual circumstances does not affect the application of the legal principles, which are that the interests of a beneficiary under an intestacy is not extinguished upon the death of that beneficiary, and that such interest would devolve to the lawful heirs of that beneficiary.

[34] In summary, Madam Mabel De Cruz's share in the estate of her son devolved upon her death to her lawful heirs, amongst whom was the respondent. This meant that, the respondent was entitled to petition for distribution under s. 8 of the Small Estates (Distribution) Act 1955 in respect of the estate of Eric De Cruz.

[35] The applicable principles may be summarised as follows:

(i) where a beneficiary has residuary interest under a will, or where there are multiple legatees and the properties comprised in the estate cannot be distributed except by way of sale of the properties, there will exist by implication of law a trust for conversion, which entitles the beneficiaries to the proceeds of sale of the properties, after the deduction of the liabilities of the estate;

(ii) similarly, the rights of beneficiaries under an intestacy exist under a trust for conversion, which trust is constituted by statute pursuant to s. 6(1) of the Distribution Act 1958;

(iii) the rights of a beneficiary under a trust for conversion does not, however, confer upon the beneficiary any interest or property in particular assets comprised in the estate. Thus, they cannot enter a caveat over landed properties comprised in the estate (*Tan Heng Poh v. Tan Boon Thong*), nor may they convey such properties to third parties (*Chor Phaik Har v. Farlim Properties Sdn Bhd*). Title to or property in such assets may only come into the hands of such categories of beneficiaries if and when those assets are distributed to them once the estate has been fully administered;

(iv) it is incorrect to state that the rights of the beneficiaries under an intestacy ceases or terminates upon their death. These rights remain extant under the trust for conversion, and is enforceable by and on behalf of the estate of the deceased as a chose in action; and

(v) where a beneficiary under an intestacy himself or herself dies intestate before the estate is fully administered, the rights under the trust for conversion devolves to his or her beneficiaries, the identities of whom are determined in accordance with s. 6(1) of the Distribution Act 1958.

Other Issues Raised By The Appellant

[36] In the course of submissions, counsel for the appellant raised a number of further issues, which we address as follows:

(i) a number of different points were raised as to why the appellant ought rightly be the sole beneficiary to the estate of Eric De Cruz.

In our judgment, the proper distribution of the assets of the estate ought to be undertaken by the land administrator pursuant to the provisions of the Small Estates (Distribution) Act 1955. The only issue that was before this court in this appeal was the question of the *locus standi* of the respondent to petition for distribution of the estate, and as such, these grounds of judgment ought to be construed accordingly;

(ii) the form of petition filed by the respondent on 27 February 2019[1] pursuant to s. 8 of the Small Estates (Distribution) Act 1955 was said to contain two false statements:

(a) first, the name of Mabel De Cruz was included in para. 3 as a beneficiary of the estate of Eric De Cruz, giving (it was contended) the false impression that Madam Mabel De Cruz was still alive at that time; and

(b) secondly, para. 7 of the petition stated that there was no prior application for distribution in respect of the same estate. According to counsel for the appellant, this statement was untrue because there was a prior application by the respondent under the Small Estates (Distribution) Act 1955 in January 2015.

In our considered view, whether or not the application is in order ought to be a matter to be determined by the land administrator in the proper exercise of his functions under the Small Estates (Distribution) Act 1955. Be that as it may, we would observe that, firstly, the death certificate of Madam Mabel De Cruz had in fact been appended to the application. Secondly, even though there had been a prior application in 2015, that application could not be proceeded with because the official records showed that letters of administration had previously been issued to the appellant. These letters of administration had in fact been set aside on 17 July 2012[2] on the application of the respondent. Thus, it could reasonably be argued that paragraph 7 of the 27 February 2019 petition was not incorrect in so far as the fact that there was no other live petition at the material time.

No less significantly, these issues had not been made the subject of the appeal before us, and as such were not issues that may properly be raised in the appeal;

(iii) the respondent petitioned the High Court at Shah Alam on 16 May 2012 for letters of administration in respect of the estate of her late mother[3]. In this petition, the assets of Madam Mabel De Cruz were described in the following manner:

ASET	Nilai
Hak dalam tindakan ("chose in action") bagi tindakan guaman Petisyen No: 31-228-Tahun 2011	

Petition No 31-228/2011 was the appellant's action to obtain letters of administration, which was subsequently set aside on 17 July 2012. It was advanced for the appellant that the asset claimed by the respondent as the administrator of the estate of Madam De Cruz was in respect of a non-existent proceeding.

This again was not an issue that has been raised in the memorandum of appeal. That aside, we fail to see how the listing of assets in the application at the High Court at Shah Alam for the administration of Madam De Cruz's estate would have any bearing in the present appeal. It has to be understood that at the time the application for letters of administration for Madam De Cruz's estate was made by the respondent on 16 May 2012, the letters of administration granted to the appellant in respect of the estate of Eric De Cruz had not yet been set aside. Thus, properly understood, the listing of assets was meant to refer to the rights of the estate of Madam De Cruz to claim for her share in the estate of Eric De Cruz under a trust for conversion.

[37] For the reasons set out in this judgment, the appeal is dismissed. The parties are directed to bear their own costs.

Endnotes:

1. See encl. 6, p. 20 of the Record of Appeal
2. See encl. 7/224
3. See encl. 7/206